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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 3

RICHARD ALLEN, ET AL.,
PETITIONERS,

—v.—

STATE BOARD OF ELECTIONS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

JURISDICTIONAL STATEMENT FILED SEPTEMBER 28, 1967
JURISDICTION POSTPONED JUNE 10, 1968

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Docket Entries

DATE	PROCEEDINGS
11–28–66	Complaint filed and summons issued.
11–28–66	Notification and Request for Designation of Three Judge Court filed.
11–30–66	Designation of Albert V. Bryan, U. S. Circuit Judge; Harrison L. Winter, U. S. Circuit Judge and John D. Butzner, Jr., U. S. District Judge ent. 11–30–66. Copies of pleadings mailed A. V. Bryan and delivered to Harrison L. Winter.
12–13–66	Marshal's return on summons as to all defts. executed and filed.
12–19–66	Pre-trial order ent. 12–19–66. Copies mailed as directed.
12–23–66	√ Answer of State Board of Elections filed. Copies mailed Judges.
12–27–66	Answer of Robert E. Garnett and J. F. Lipscomb filed (copies to Judges).
12–28–66	Answer of Thomas Brown and Paul Bell filed (copies mailed to Judges).
1– 9–67	Answer filed by defts. Mark Grizzard, Benj. Griffin & Forest Lankford.
2–20–67	Plaintiffs' request for admissions, filed.
2–22–67	Response of State Board of Elections to plaintiffs' request for admissions, filed.
2–24–67	Response to pltf's. request for admissions filed by Robert E. Garnett & J. F. Lipscomb.
2–27–67	Response to pltfs. request for admissions filed.

Docket Entries

DATE	PROCEEDINGS
3- 1-67	Response to pltfs. request for admissions filed.
3-17-67	Plfs' pre-trial brief rec'd.
3-21-67	List of witnesses that may be called by defts.
3-22-67	Motion for summary judgment filed by pltf.
3-22-67	List of witnesses that may be called to testify at hearing received & filed by pltfs. Certificate & exhibits attached.
3-30-67	Brief on behalf of defts., rec'd.
4-11-67	TRIAL PROCEEDINGS: Before: Hon. Albert V. Bryan and Harrison L. Winter, U. S. Circuit Judges and Hon. John D. Butzner, Jr., U. S. District Judge, sitting as a three-judge court. Parties appeared by counsel, The Attorney General's Office of Virginia and R. D. McIlwaine, III, representing State Board of Elections, William C. Carter representing defendants Garnett and Lipscomb, H. Benj. Vincent representing defendants Lankford and Griffen and Wm. R. Blandford representing defendants Brown and Bell. Messrs. Harold M. Marsh and S. W. Tucker represented plaintiffs. Issues joined. Case argued by Messrs. Marsh and Tucker for plaintiffs and Mr. R. D. McIlwaine, III, on behalf of all defendants. Adjournment.
5- 2-67	Opinion of the Court filed.
5- 2-67	Judgment order dismissing complaint and striking action from docket, with costs taxed against plfs., ent. 5-2-67 by three judge court. Copies

Docket Entries

DATE	PROCEEDINGS
	delivered by Judge Butzner's office of Opinion and order.
6–29–67	Notice of appeal to the Supreme Court of the U. S. filed by pltfs.
8–24–67	Order granting motion of plfs. to extend until 9–28–67 time to file their jurisdictional statement, ent. 8–24–67.
8–24–67	Motion to enlarge time for filing jurisdictional statement filed by plfs.
8–24–67	Order extending time for docketing appeal to and including 9–8–67 entered nunc pro tunc 8–8–67. Copies mailed counsel.
9– 8–67	Appeal Record (2 Vols.) mailed to Clerk, Supreme Court of U. S., Wash., D. C. $4.85 certified mail, return receipt requested. Copies of index mailed counsel.

Complaint

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CIVIL ACTION NO. .....

RICHARD ALLEN, *et al.*,

Plaintiffs,

vs.

STATE BOARD OF ELECTIONS, *et al.*,

Defendants.

COMPLAINT

1(a) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331. This action arises under the Fourteenth Amendment to the Constitution of the United States and under Public Law 89-110, 79 Stat. 437, known as the Voting Rights Act of 1965 (42 U.S.C. §1973, et seq.). The matter in controversy, exclusive of interest and costs, exceeds the value of ten thousand dollars.

1(b) Jurisdiction is further invoked under Title 28, United States Code, Section 1343 (3) and (4). This is an action to redress and to secure equitable relief against the deprivation, under color of State statute, regulation, custom and usage, of the right to vote as secured by the Constitution and statutes of the United States.

2(a) Plaintiffs seek a temporary restraining order and an interlocutory injunction to prevent the defendant State Board of Elections from making statement of the whole number of votes given at the general election held November 8, 1966 in the Fourth Congressional District of Virginia for a member of the House of Representatives in Congress, pending this Court's decision of the issues herein raised and compliance with such decision.

2(b) Plaintiffs seek a declaratory judgment holding that the Equal Protection Clause of the Fourteenth Amendment forbids election officials of the Commonwealth of Virginia under color of statute or otherwise to deny any voter, solely because of his inability to write, the privilege of casting a secret ballot for a person whose name is not printed on the official ballots and having such ballot counted and included in the appropriate returns; such privilege having been reserved to voters generally by Section 28 of the Constitution of Virginia and, by Section 24-252 of the Code of Virginia, being purportedly extended only to voters who can write.

2(c) Plaintiffs seek a declaratory judgment holding that the Voting Rights Act of 1965 (43 U.S.C. §1973, et seq.) forbids election officials of the Commonwealth of Virginia to deny any citizen a right to vote which is equally unrestricted as that enjoyed by other citizens and the right to have his vote counted and included in the appropriate totals of votes cast, when the sole basis for such denial is a failure of that citizen to demonstrate his ability to write.

2(d) Plaintiffs seek an injunction restraining the State Board of Elections and the other defendant election officials from failing or refusing to count and include in their

respective official returns the votes given in the general election held November 8, 1966 by the plaintiffs and others for the person of their choice to be the member of the House of Representatives from the Fourth Congressional District of Virginia whose name they inserted on official ballots by means other than handwriting and, also, an injunction restraining the State Board of Elections and the other defendant election officials and their successors in office from failing or refusing to count and from requiring or permitting any other election official to fail or refuse to count any vote hereafter given for any person solely because the name of such person was inserted on the official ballot otherwise than in the handwriting of the voter.

3. Plaintiffs bring this suit as a class action, pursuant to Rule 23(a) and (b)(1) and (3) of the Rules of Civil Procedure, on behalf of all persons residing in the Fourth Congressional District of Virginia who, at the general election held November 8, 1966 for a member of the House of Representatives, voted for a person not named on the official ballot as printed by inserting the name of such person on the ballot by means other than handwriting and making a check, cross mark or line immediately before the name thus inserted and whose votes thus cast were not counted and included in the official returns.

4. Each of the plaintiffs is a citizen and a voter of the Commonwealth of Virginia and is registered to vote in one of the election precincts or wards of one of the counties and cities which comprise the Fourth Congressional District of Virginia. The precinct or ward and the county or city in which each plaintiff is registered to vote is stated in his or her affidavit herewith filed.

5. At the general election held November 8, 1966 each of the plaintiffs was furnished an official ballot on which had been printed the names of two candidates for election to the House of Representatives from the Fourth Congressional District of Virginia. Immediately under the names of those two candidates each of the plaintiffs inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; each of the plaintiffs made a check, cross mark or line on the ballot immediately preceding the name thus inserted; and each of said ballots was duly deposited into the ballot box.

6. In many of the election precincts within the Fourth Congressional District of Virginia, a considerable number of persons employed the procedure described in the next preceding paragraph. Many did so because they are illiterate; some because they are not sufficiently literate to write legibly; and others because arthritis or other physical infirmities had impaired their penmanship.

7. The defendant State Board of Elections was created by statute which is codified as Section 24-24 of the Code of Virginia, 1950. The State Board of Elections is required to so supervise and co-ordinate the work of the county and city electoral boards as to obtain uniformity in their practices and proceedings and to make such rules and regulations not inconsistent with law as will be conducive to the proper functioning of such electoral boards. (Section 24-25 of the Code of Virginia, 1950). Further, it is required by statute (Section 24-285 of the Code of Virginia 1950) that the State Board of Elections on November 28, 1966 shall make statement of the whole number

of votes given at the general election held November 8, 1966 for members of the United States Senate and House of Representatives.

8. Each of the other defendants was on November 8, 1966 a judge or clerk of election duly appointed by the electoral board of his county or city for a precinct wherein one of the plaintiffs was on and prior to that day duly registered to vote.

9. On November 8, 1966 and after the polls had been closed, it was the duty of the judges of election at each of the several precincts or wards to count and ascertain the number of votes cast for each person voted for and to sign and attest returns showing the name of each person voted for, the office for which such person received such votes and the number of votes he received at such precinct or ward. Such returns as made by the judges of election at the several precincts or wards in the counties and cites which comprise the Fourth Congressional District of Virginia are the bases from which the State Board of Elections will make a statement of the whole number of votes given at the general election held November 8, 1966 in the Fourth Congressional District of Virginia for a member of the House of Representatives in Congress.

10. The judges of election in several of said precincts and specifically those who are defendants herein failed and refused to count and include in their respective returns any votes for any person whose name was inserted on an official ballot otherwise than in the handwriting of the voter. Hence the votes cast by the plaintiffs and by others who inserted the name of the person voted for

by means other than handwriting were not counted and included in the returns of total votes for the office of member of the House of Representatives from the Fourth Congressional District of Virginia.

WHEREFORE, the plaintiffs respectfully pray:

A. (1) That the Court issue a Temporary Restraining Order restraining the defendant State Board of Elections from making statement of the whole number of votes given at the general election held November 8, 1966 in the Fourth Congressional District of Virginia for a member of the House of Representatives in Congress, pending this Court's decision of the issues herein raised and compliance with such decision.

(2) That the Court convene a three-judge District Court, as required by Titel 28, United States Code, Section 2281 and 2284.

(3) That the Court enter an interlocutory injunction as required by Title 28, United States Code, Section 2281 until the issues herein raised will have been decided.

B. That the Court advance this action on the docket and order a speedy hearing of this action according to law, and upon such hearing

(1) That the Court enter a judgment declaring that the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and also that the Voting Rights Act of 1965, invalidates so much of Section 24-252 of the Code of Virginia, 1950, as amended as purports to deny any voter, solely because of his inability to write, the privilege of casting a secret ballot

for a person whose name is not printed on the official ballots and having such ballot counted in the appropriate returns; such privilege having been reserved to voters generally by Section 28 of the Constitution of Virginia.

(2) That this Court enjoin and restrain the State Board of Education and the other defendant election officials from failing and refusing to count and include in their respective election returns the votes given in the general election held November 8, 1966 by the plaintiffs and others for the person of their choice to be the member of the House of Representatives from the Fourth Congressional District of Virginia whose name they inserted on official ballots by means other than handwriting.

(3) That this Court enjoin and restrain the State Board of Elections and the other defendant election officials and their successors in office from failing or refusing to count and from requiring or permitting any other election official to fail or refuse to count any vote hereafter given for any person solely because the name of such person was inserted on the official ballot otherwise than in the handwriting of the voter.

/s/ S. W. Tucker
Of Counsel for Plaintiffs

Hill, Tucker & Marsh
214 East Clay Street
Richmond, Virginia 23219

James M. Nabrit, III
Jack Greenberg
10 Columbus Circle, Suite 2030
New York, New York 10019

Counsel for Plaintiffs

Affidavit of Richard Allen

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Moss Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Richard Allen

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

His
/s/ RICHARD X ALLEN
Mark

[Affidavit of Notary Public Omitted]

Affidavit of Lena W. Dunn

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Moss Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Lena W. Dunn.

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

Her
/s/ LENA X DUNN
Mark

[Affidavit of Notary Public Omitted]

Affidavit of Washington Moore

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Moss Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside, and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Washington Moore

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

His
/s/ WASHINGTON X MOORE
Mark

[Affidavit of Notary Public Omitted]

Affidavit of McKinley Dunn

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Hicksford Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of McKinley Dunn

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

His
/s/ McKinley X Dunn
Mark

[Affidavit of Notary Public Omitted]

Affidavit of Nora Tyler

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Belfield Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Nora Tyler

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

Her
/s/ NORA X TYLER
Mark

[Affidavit of Notary Public Omitted]

Affidavit of James Gilbert Tyler

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Belfield Election Precinct, in the County of Greensville. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of James Gilbert Tyler

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

His
/s/ JAMES GILBERT X TYLER
Mark

[Affidavit of Notary Public Omitted]

Affidavit of Fannie M. Brown

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Brown's Church Election Precinct, in the County of Cumberland. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Fannie M. Brown

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

Her
/s/ X FANNIE M. BROWN
Mark

[Affidavit of Notary Public Omitted]

Affidavit of Patrick H. Brown

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Brown's Church Election Precinct, in the County of Cumberland. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of Patrick H. Brown

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

His
/s/ X PATRICK H. BROWN
Mark

[Affidavit of Notary Public Omitted]

Affidavit of James Donikens

On the 8th day of November, 1966 I was a qualified voter of the State of Virginia, duly registered as such in Smith's Crossroads Election Precinct, in the County of Powhatan. On that day and at the voting place for that precinct I was regularly furnished an official ballot on which had been printed names of candidates for the respective offices to be filled by the election then being held, including the names "Watkins M. Abbitt" and "Edward J. Silverman", in that order, as candidates for election to the House of Representatives from the Fourth Congressional District of Virginia.

Immediately below the name of Edward J. Silverman I inserted the name "S. W. Tucker" by pasting on the official ballot a strip of paper on which that name had been printed; and I made a cross mark ☒ on the ballot immediately preceding the name "S. W. Tucker" as so inserted. I was then unable to legibly write the name "S. W. Tucker" on the ballot.

Having thus voted for S. W. Tucker to be the member of the House of Representatives from the Fourth Congressional District of Virginia, I folded the ballot with the names of the candidates on the inside and handed same to one of the judges of election who then put it into the ballot box.

I am informed that my said vote and numerous other votes cast in the same manner were not counted by the judges and clerks of election serving at said precinct and at many other precincts within the several counties and cities which constitute the Fourth Congressional District of Virginia.

Affidavit of James Donikens

I authorize suit in my name to require my vote and other votes similarly cast to be counted and included in the official returns of the whole number of votes given in said election for member of the House of Representatives from the Fourth Congressional District of Virginia.

/s/ X *(his mark)* JAMES DONIKENS

[Affidavit of Notary Public Omitted]

Notification and Request For Designation of Three-Judge Court

To the Honorable Clement F. Haynsworth, Jr., Chief Judge of the United States Court of Appeals for the Fourth Circuit:

The plaintiffs seek a declaration that the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and the Voting Rights Act of 1965 invalidate portions of § 24-252, Code of Virginia 1950. The plaintiffs also seek injunctive relief.

It appearing that this action is one which, under the provisions of 28 U.S.C. § 2281 must be heard and determined by a district court of three judges, and a motion having been filed for the designation of such a court, you are hereby notified, as required by 28 U.S.C. § 2284, that the application in this action has been presented to me. You are respectfully requested to designate two other judges, at least one of whom shall be a circuit judge, to serve with me as members of the court to hear and determine the action.

/s/ JOHN D. BUTZNER, JR.
United States District Judge

November 28, 1966

Designation of Three-Judge Court

It appearing to the undersigned Chief Judge of the Fourth Judicial Circuit of the United States that a civil action as above entitled has been instituted in the United States District Court for the Eastern District of Virginia, for the stated purpose of enjoining the enforcement of and declaring unconstitutional portions of § 24-252, Code of Virginia 1950, as being in claimed conflict with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and the Voting Rights Act of 1965; and that application for such relief was made to Honorable John D. Butzner, Jr., United States District Judge for the Eastern District of Virginia, who has notified the undersigned pursuant to § 2284 of Title 28, United States Code Annotated, of the pendency of such application, to the end that a court of three judges may be constituted, as required by § 2281, Title 28, United States Code.

Now, therefore, I do hereby designate Honorable Albert V. Bryan, United States Circuit Judge, Fourth Judicial Circuit and Honorable Harrison L. Winter, United States Circuit Judge, Fourth Judicial Circuit, to serve with the said Honorable John D. Butzner, Jr. in the hearing and determination of the above entitled action, as provided by law, the three to constitute a District Court of three judges as provided by § 2284, Title 28, United States Code.

This the 30th day of November, 1966.

/s/ (Illegible)
Chief Judge, Fourth Circuit

Let the Clerk send copies of this order to counsel of record, each defendant for whom no counsel has yet noted an appearance and the Attorney General of Virginia.

/s/ JOHN D. BUTZNER, JR.
United States District Judge

December 19, 1966

Pre-Trial Order

It is ADJUDGED and ORDERED:

1. The defendants are directed to file their answers, if they have not already done so, together with such additional pleadings as they may deem proper, on or before January 6, 1967. The filing of answers shall not constitute a waiver of defenses and objections raised by motions.

2. The plaintiffs may file replies, if they deem it advisable, on or before January 13, 1967.

3. No additional motions or pleadings may be filed thereafter except by leave of court for good cause shown.

4. All pre-trial discovery should be completed on or before March 1, 1967.

5. All proposed exhibits and the names and addresses of all persons who may be called to testify must be filed with the Clerk of this court in Richmond twenty days prior to the date of the hearing on the merits. If the exhibits are voluminous, they should be marked by the Clerk at least two days prior to the date of trial. Formal proof of exhibits will be deemed waived unless objected to in writing at least seven days prior to the date of trial. Copies of all exhibits, lists of witnesses and briefs should be mailed to all counsel of record and the members of the three-judge court at their respective addresses.

6. Hearing on all motions, unless otherwise ordered by the court, will be deferred until the date of the hearing on the merits.

7. Plaintiffs' briefs should be filed on or before March 15, 1967. Defendants' briefs should be filed on or before April 1, 1967.

8. This case is set for hearing upon the merits and upon all motions in the United States District Court, Post Office Building, Richmond, Virginia, on Tuesday, April 11, 1967, at 11:30 A.M.

Let the Clerk send copies of this order to counsel of record, each defendant for whom no counsel has yet noted an appearance and the Attorney General of Virginia.

/s/ JOHN D. BUTZNER, JR.
United States District Judge

December 19, 1966

Answer of State Board of Elections

Now comes the State Board of Elections of the Commonwealth of Virginia, by counsel, and answers the complaint herein and says:

1. For answer to Paragraphs 1(a) and 1(b) of the complaint, this defendant admits that the plaintiffs seek to invoke the jurisdiction of this Court under the provisions of law set forth in said paragraphs. This defendant denies that this action arises under or is authorized by any of the provisions of law specified in said paragraphs or that the matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000 or that this Court has jurisdiction of the action under any of the provisions of law set forth in Paragraphs 1(a) or 1(b) of the complaint.

2. For answer to Paragraphs 2(a), 2(b), 2(c) and 2(d) of the complaint, this defendant admits that the plaintiffs seek the temporary restraining order, injunction and declaratory judgments specified in such paragraphs. This defendant denies that plaintiffs are entitled to said temporary restraining order, injunction or declaratory judgments for any reason set forth in the complaint.

3. This defendant neither admits nor denies the allegations of Paragraphs 3, 4, 5 and 6 of the complaint and calls for strict proof of the same.

4. The allegations of Paragraph 7 of the complaint are admitted.

5. This defendant neither admits nor denies the allegations of Paragraph 8 of the complaint and calls for strict proof of the same.

6. For answer to the initial sentence of Paragraph 9 of the complaint, this defendant states that—after the polls had been closed on November 8, 1966—it was the duty of the judges of election at each of the several precincts or

wards to count and ascertain the number of votes properly cast for each person voted for and to sign and attest returns showing the name of each person properly voted for, the office for which such person received such votes and the number of legal votes he received at such precinct or ward. Such returns as made by the judges of election at the several precincts or wards in the counties and cities which comprise the Fourth Congressional District of Virginia are the bases upon which the commissioners of the counties and cities consolidate the vote and compile an abstract of the votes properly cast in the counties and cities, from which abstract the State Board of Elections will make a statement of the whole number of votes given at the general election held November 8, 1966, in the Fourth Congressional District of Virginia for a member of the House of Representatives in Congress.

7. The allegations of Paragraph 10 of the complaint are denied.

Now having fully answered, this defendant prays to be hence dismissed with its costs in this behalf expended.

STATE BOARD OF ELECTIONS OF THE
COMMONWEALTH OF VIRGINIA
By: /s/ ROBERT Y. BUTTON
Of Counsel

Robert Y. Button
Attorney General of Virginia

Kenneth C. Patty
Assistant Attorney General

R. D. McIlwaine, III
Assistant Attorney General

Supreme Court-State Library Building
Richmond, Virginia 23219

Answer of Robert E. Garnett and J. F. Lipscomb

Now comes Robert E. Garnett and J. F. Lipscomb, both of Cumberland County, Virginia, by counsel, and jointly and severally answer the complaint herein and say:

1. That J. F. Lipscomb is the correct name of the defendant designated as "J. S. Lipscomb" in the complaint.

2. For answer to paragraphs 1(a) and 1(b) of the complaint, these defendants admit that the plaintiffs seek to invoke the jurisdiction of this Court under the provisions of law set forth in said paragraphs. These defendants deny that this action arises under or is authorized by any of the provisions of law specified in said paragraphs or that the matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00 or that this Court has jurisdiction of the action under any of the provisions of law set forth in Paragraphs 1(a) or 1(b) of the complaint.

3. For answer to Paragraphs 2(a), 2(b), 2(c) and 2(d) of the complaint, these defendants admit that the plaintiffs seek the temporary restraining order, injunction and declaratory judgments specified in such paragraphs. These defendants deny that plaintiffs are entitled to said temporary restraining order, injunction or declaratory judgments for any reason set forth in the complaint.

4. These defendants neither admit nor deny the allegations of Paragraphs 3, 4, 5 and 6 of the complaint and call for strict proof of the same.

5. The allegations of Paragraph 7 of the complaint are admitted.

6. These defendants neither admit nor deny the allegations of Paragraph 8 of the complaint and call for strict proof of the same, but do allege that J. F. Lipscomb was a duly appointed clerk of election at the Brown's precinct in the County of Cumberland, Commonwealth of Virginia, on November 8, 1966, and that Robert E. Garnett was a duly appointed judge of election at the Brown's precinct in Cumberland County, Commonwealth of Virginia, on November 8, 1966.

7. For answer to the initial sentence of Paragraph 9 of the complaint, these defendants state that—after the polls had been closed on November 8, 1966—it was their duty as judge and clerk of election at their precinct, to count and ascertain the number of votes properly cast for each person voted for and to sign and attest returns showing the name of each person properly voted for, the office for which such person received such votes and the number of legal votes he received at such precinct. Such returns as made by the judges of election at their precinct in the County of Cumberland, which is a part of the Fourth Congressional District of Virginia, are the bases upon which the commissioners of the counties and cities consolidate the vote and compile an abstract of the votes properly cast in the counties and cities, from which abstract the State Board of Elections will make a statement of the whole number of votes given at the general election held November 8, 1966, in the Fourth Congressional District of Virginia for a member of the House of Representatives in Congress.

8. These defendants neither admit nor deny the allegations in Paragraph 10 of the complaint and call for strict proof of the same.

Answer of Robert E. Garnett and J. F. Lipscomb

Now having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

ROBERT E. GARNETT
Cumberland, Virginia

J. F. LIPSCOMB
Cumberland, Virginia

By /s/ WILLIAM C. CARTER
Of Counsel

William C. Carter
Commonwealth's Attorney
Cumberland County, Virginia

Answer of Thomas Brown

Now comes Thomas Brown, by counsel, and answers the complaint herein and says:

1. For answer to Paragraph 1(a) of the complaint, this defendant denies each and every allegation.

2. For answer to Paragraph 1(b) of the complaint, this defendant denies that this Court has jurisdiction as alleged therein and further says the plaintiffs have no valid cause of action as set forth in this Paragraph.

3. For answer to Paragraph 2(a) of the complaint, this defendant denies that the plaintiffs are entitled to a temporary restraining order and an interlocutory injunction as sought by the plaintiffs.

4. For answer to Paragraph 2(b) of the complaint, this defendant denies that plaintiffs are entitled to a declaratory judgment as sought by the plaintiffs.

5. For answer to Paragraph 2(c) of the complaint, this defendant denies that the plaintiffs are entitled to a declaratory judgment as sought by the plaintiffs.

6. For answer to Paragraph 2(d) of the complaint, this defendant denies that the plaintiffs are entitled to the injunctions sought by the plaintiffs.

7. This defendant denies the allegations of Paragraphs 3, 4 and 5 of the complaint.

8. This defendant denies the allegations of Paragraph 6 of the complaint, and especially denies that the plaintiff James Donikens is illiterate, or not sufficiently literate to

write legibly, nor had he any physical infirmities which impaired his penmanship.

9. This defendant neither admits nor denies the allegations of Paragraphs 7 and 8 of the complaint.

10. This defendant neither admits nor denies the allegations of paragraph 9 of the complaint.

11. This defendant denies the allegations of Paragraph 10 of the complaint.

Now having fully answered, this defendant prays to be hence dismissed with his costs in his behalf expended.

.....

Thomas Brown

By: .....

Of Counsel

William R. Blandford
Attorney at Law
Powhatan, Virginia

Answer of Paul Bell

Now comes Paul Bell, by counsel, and answers the complaint herein and says:

1. For answer to Paragraph 1 (a) of the complaint, this defendant denies each and every allegation.

2. For answer to Paragraph 1(b) of the complaint, this defendant denies that this Court has jurisdiction as alleged therein and further says the plaintiffs have no valid cause of action as set forth in this Paragraph.

3. For answer to Paragraph 2(a) of the complaint, this defendant denies that the plaintiffs are entitled to a temporary restraining order and an interlocutory injunction as sought by the plaintiffs.

4. For answer to Paragraph 2(b) of the complaint, this defendant denies that plaintiffs are entitled to a declaratory judgment as sought by the plaintiffs.

5. For answer o Paragraph 2(c) of the complaint, this defendant denies that the plaintiffs are entitled to a declaratory judgment as sought by the plaintiffs.

6. For answer to Paragraph 2(d) of the complaint, this defendant denies that the plaintiffs are entitled to the injunctions sought by the plaintiffs.

7. This defendant denies the allegations of Paragraphs 3, 4 and 5 of the complaint.

8. This defendant denies the allegations of Paragraph 6 of the complaint, and especially denies that the plaintiff James Donikens is illiterate, or not sufficiently literate to

write legibly, nor had he any physical infirmities which impaired his penmanship.

9. This defendant neither admits nor denies the allegations of Paragraphs 7 and 8 of the complaint.

10. This defendant neither admits nor denies the allegations of Paragraph 9 of the complaint.

11. This defendant denies the allegations of Paragraph 10 of the complaint.

Now having fully answered, this defendant prays to be hence dismissed with his costs in this behalf expended.

/s/ .....
Paul Bell
By: /s/ Wm R Blandford
Of Counsel

William R. Blandford
Attorney at Law
Powhatan, Virginia

Answer of Mark Grizzard, Benjamin Griffin and Forest Lankford

The defendants, Mark Grizzard, Benjamin Griffin and Forest Lankford, come now and answers the complaint herein as follows:

1. For answer to Paragraphs 1(a) and 1(b) of the complaint, the defendants deny that this action arises under or is authorized by any of the provisions of law specified in said Paragraphs or that the matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00 or that this Court has jurisdiction of the action under any of the provisions of law set forth in Paragraphs 1(a) or 1(b) of the complaint.

2. For answer to Paragraphs 2(a), 2(b), 2(c) and 2(d) of the complaint, the defendants deny that plaintiffs are entitled to said temporary restraining order, injunction or declaratory judgments for any reason set forth in the complaint.

3. The defendants neither admit nor deny the allegations of Paragraphs 3, 4, 5, 6 and 7 of the complaint and calls for strict proof of the same.

4. For answer to Paragraph 8 of the complaint, the defendants admit that on 8 November 1966 they were acting as judges of the election duly appointed by the Electoral Board of Greensville County in their respective precincts but will require strict proof of the remaining allegation of that Paragraph.

5. The defendants deny the allegations contained in Paragraph 9 of the complaint.

Answer of Mark Grizzard, Benjamin Griffin and Forest Lankford

6. The defendants deny the allegations of Paragraph 10 of the complaint.

7. The defendants reserve the right to amend their answer, at any time as they may be advised and further state that they will rely upon any and all available defenses.

Mark Grizzard
Benjamin Griffin
Forest Lankford
By /s/ H. Benj Vincent
Counsel

/s/ H. Benj Vincent
H. Benjamin Vincent
Vincent, Warriner & Outten
332 South Main Street
Emporia, Virginia
Attorney for Commonwealth
Greensville County, Virginia

Request for Admissions

Under provisions of Rule 36(a) of the Federal Rules of Civil Procedure, plaintiffs request that, on or before March 1, 1967, the defendants make admission of the matters of fact hereinafter set forth:

One

That on November 8, 1966, Mark Grizzard was a duly appointed judge of election for Moss Precinct in the County of Greensville and served as such.

Two

That on November 8, 1966, Forest Lankford was a duly appointed clerk for Hicksford Precinct in the County of Greensville and served as such.

Three

That on November 8, 1966, Benjamin Griffen was a duly appointed judge of election for Belfield Precinct in the County of Greensville and served as such.

Four

That on November 8, 1966, Robert E. Garnett was a duly appointed judge of election for Brown's Church Precinct in the County of Cumberland and served as such.

Five

That on November 8, 1966, J. F. Lipscomb was a duly appointed clerk for Brown's Church Precinct in the County of Cumberland and served as such.

Request for Admissions

SIX

That on November 8, 1966, Thomas Brown was a duly appointed judge of election for Smith Cross Roads Precinct in the County of Powhatan and served as such.

SEVEN

That on November 8, 1966, Paul Bell was a duly appointed judge of election for Smith Cross Roads Precinct in the County of Powhatan and served as such.

EIGHT

That voting machines were used in the November 8, 1966 general elections in the Fourth Congressional District of Virginia, only in the City of Colonial Heights, in the City of Hopewell, in the City of Suffolk and in some of the election precincts of the City of Chesapeake.

NINE

That white paper ticket ballots, as described in Section 24-215 of the Code of Virginia, were used for the November 8, 1966 general election in some of the election precincts in the Fourth Congressional District of Virginia.

TEN

That white paper ticket ballots, as described in Section 24-215 of the Code of Virginia, were used for the November 8, 1966 general election in the City of Petersburg, in the City of Franklin, and in all of the counties which are a part of the Fourth Congressional District of Virginia.

ELEVEN

That, except in those precincts in which voting machines were in use, the official ballots as printed for the General Election held November 8, 1966 contained the names of Watkins M. Abbitt and Edward J. Silverman, in that order, as candidates for the House of Representatives from the Fourth Congressional District of Virginia; and that no person's name appeared below the name of Edward J. Silverman on the official ballots as printed.

TWELVE

That on November 8, 1966, in at least one precinct in the Fourth Congressional District of Virginia and after the polls had been closed and the ballots had been taken from the ballot box, at least one of the official ballots was found to have been marked with a check, cross mark or line immediately preceding a strip of paper which had been pasted on the ballot immediately under the name Edward J. Silverman, on which strip the name "S. W. Tucker" had been printed.

THIRTEEN

That when the ballots were removed from the ballot box at Moss Precinct in Greensville County following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on the preceding page.

FOURTEEN

That on November 8, 1966, there were persons qualified and registered to vote at Moss Precinct in Greensville County who, being illiterate or unlettered, were unable to write legibly.

Request for Admissions

FIFTEEN

That the ballots which had been altered and marked as described in item TWELVE on the preceding page and placed in the ballot box for Moss Precinct in Greensville County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

SIXTEEN

That when the ballots were removed from the ballot box at Hicksford Precinct in Greensville County following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on the preceding page.

SEVENTEEN

That on November 8, 1966 there were persons qualified and registered to vote at Hicksford Precinct in Greensville County who, being illiterate or unlettered, were unable to write legibly.

EIGHTEEN

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at Hicksford Precinct in Greensville County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

NINETEEN

That when the ballots were removed from the ballot box at Belfield Precinct in Greensville County, following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

Request for Admissions

TWENTY

That on November 8, 1966 there were persons qualified and registered to vote at Belfield Precinct in Greensville County who, being illiterate or unlettered, were unable to write legibly.

TWENTY-ONE

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at Belfield Precinct in Greensville County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

TWENTY-TWO

That when the ballots were removed from the ballot box at Brown's Church Precinct in Cumberland County, following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

TWENTY-THREE

That on November 8, 1966 there were persons qualified and registered to vote at Brown's Church Precinct in Cumberland County who, being illiterate or unlettered, were unable to write legibly.

TWENTY-FOUR

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at Brown's Church Precinct in Cumberland County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

Request for Admissions

TWENTY-FIVE

That when the ballots were removed from the ballot box at Smith's Cross Roads Precinct in Powhatan County following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

TWENTY-SIX

That on November 8, 1966 there were persons qualified and registered to vote at Smith's Cross Roads Precinct in Powhatan County who, being illiterate or unlettered, were unable to write legibly.

TWENTY-SEVEN

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at Smith's Cross Roads Precinct in Powhatan County were not included and counted in the official returns as votes validly cast for S. W. Tucker.

TWENTY-EIGHT

That in at least one precinct in Southampton County when the ballots were removed from the ballot box following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

TWENTY-NINE

That on November 8, 1966 there were persons qualified and registered to vote at such precinct or precincts in Southampton County who, being illiterate or unlettered, were unable to write.

Request for Admissions

THIRTY

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at such precinct or precincts in Southampton County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

THIRTY-ONE

That in at least one precinct in Nansemond County, when the ballots were removed from the ballot box following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

THIRTY-TWO

That on November 8, 1966 there were persons qualified and registered to vote at such precinct or precincts in Nansemond County who, being illiterate or unlettered, were unable to write.

THIRTY-THREE

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at such precinct or precincts in Nansemond County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

THIRTY-FOUR

That in at least one precinct in the City of Chesapeake, when the ballots were removed from the ballot box following the closing of the polls on November 8, 1966 some of

the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

THIRTY-FIVE

That on November 8, 1966 there were persons qualified and registered to vote at such precinct or precincts in the City of Chesapeake who, being illiterate or unlettered, were unable to write.

THIRTY-SIX

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at such precinct or precincts in the City of Chesapeake were not counted and included in the official returns as votes validly cast for S. W. Tucker.

THIRTY-SEVEN

That in at least one precinct in Prince Edward County when the ballots were removed from the ballot box following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

THIRTY-EIGHT

That on November 8, 1966 there were persons qualified and registered to vote at such precinct or precincts in Prince Edward County who, being illiterate or unlettered, were unable to write.

THIRTY-NINE

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the

ballot box at such precinct or precincts in Prince Edward County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

FORTY

That in at least one precinct in Nottoway County when the ballots were removed from the ballot box following the closing of the polls on November 8, 1966 some of the ballots were found to have been altered and marked in the manner set forth in item TWELVE on page three.

FORTY-ONE

That on November 8, 1966 there were persons qualified and registered to vote at such precinct or precincts in Nottoway County who, being illiterate or unlettered, were unable to write.

FORTY-TWO

That the ballots which had been altered and marked as described in item TWELVE on page three and placed in the ballot box at such precinct or precincts in Nottoway County were not counted and included in the official returns as votes validly cast for S. W. Tucker.

/s/ S. W. TUCKER
Of Counsel for Plaintiffs

HILL, TUCKER & MARSH
214 East Clay Street
Richmond, Virginia 23219

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York, New York

Counsel for Plaintiffs

Response to Plaintiffs' Request for Admissions Filed by State Board of Elections

Now comes the State Board of Elections of the Commonwealth of Virginia, by counsel, and responds to plaintiffs' request for admissions heretofore filed in this cause and says:

1. This defendant has no knowledge of the matters set forth in Paragraphs One through Seven or Paragraphs Twelve through Forty-Two of said request and neither admit nor deny the same.

2. This defendant admits the accuracy of the matters set forth in Paragraphs Nine and Eleven of said request for admissions.

3. For response to Paragraph Eight of said request for admissions, this defendant is advised that voting machines were used in the November 8, 1966, general election in the Fourth Congressional District of Virginia in the City of Colonial Heights, the City of Hopewell and some of the precincts in the City of Chesapeake and Nansemond County, but such voting machines were not used in the City of Suffolk.

4. For response to Paragraph Ten of said request for admissions, this defendant is advised that white paper ticket ballots as described in Section 24-215 of the Virginia Code were used in the November 8, 1966, general election in the Fourth Congressional District in the City of Petersburg, the City of Franklin, the City of Suffolk and in

parts of all of the counties which are located in the Fourth Congressional District of Virginia.

STATE BOARD OF ELECTIONS OF THE COMMONWEALTH OF VIRGINIA

By: /s/ R. D. McILWAINE, III
Of Counsel

Robert Y. Button
Attorney General of Virginia

Kenneth C. Patty
Assistant Attorney General

R. D. McIlwaine, III
Assistant Attorney General

Supreme Court—State Library Building
Richmond, Virginia 23219

Response to Plaintiffs' Request for Admissions Filed by Robert E. Garnett and J. F. Lipscomb

Now come Robert E. Garnett and J. F. Lipscomb, by counsel, and jointly and severally respond to plaintiffs' request for admissions heretofore filed in this cause, and say:

1. These defendants have no knowledge of the matters set forth in Paragraphs One through Three, Paragraphs Six through Twenty-One, Paragraph Twenty-Three, or Paragraphs Twenty-Five through Forty-Two of said request and neither admit nor deny the same.

2. The defendant, Robert E. Garnett, admits the accuracy of Paragraph Four of said request.

3. The defendant J. F. Lipscomb admits the accuracy of Paragraph Five of said request.

4. The defendants Robert E. Garnett and J. F. Lipscomb both admit the accuracy of Paragraphs Twenty-Two and Twenty-Four of said request.

ROBERT E. GARNETT
Cumberland, Virginia

J. F. LIPSCOMB
Cumberland, Virginia
By /s/ WM C CARTER
Of Counsel

William C. Carter
Commonwealth's Attorney
Cumberland, Virginia

Response to Plaintiffs' Request for Admissions Filed by Thomas Brown and Paul Bell

Now come Thomas Brown and Paul Bell, by counsel, and respond to plaintiffs' request for admissions heretofore filed in this cause and say:

1. These defendants have no knowledge of the matters set forth in Paragraphs One through Five of said request and neither admit nor deny the same.

2. These defendants admit the accuracy of the matters set forth in Paragraphs Six and Seven of said request.

3. As to Paragraph Nine and Ten, these defendants state that white paper ticket ballots as described in Section 24-215 of the Code of Virginia were used at Smith's Cross Roads precinct in Powhatan County on November 8, 1966, but they have no knowledge as to the type of ballots used at any other precinct in the Fourth Congressional District.

4. These defendants have no knowledge of the matters set forth in Paragraphs Eight and Eleven of the request and further they have no knowledge of the matters set forth in paragraphs Thirteen through Twenty-Four and Paragraphs Twenty-Eight through Forty-Two and neither admit nor deny the same.

5. For Paragraphs Twelve and Twenty-Five these defendants state that some of the ballots had been altered and marked in the manner set forth in Paragraph Twelve on Page Three of the request.

6. For Paragraph Twenty-Six the defendants state that they have no knowledge of the matters set forth therein

as to parties being illiterate or unlettered and therefore unable to write legibly but the defendant Paul Bell states that he helped at least two parties at the polls because of physical infirmities.

7. These defendants state for Paragraph Twenty-Seven that ballots marked as described in Item Twelve were not counted as ballots validly cast for S. W. Tucker.

THOMAS BROWN
PAUL BELL
By: /s/ WILLIAM R. BLANDFORD
By: T.L.L. III Of Counsel

Honorable Albert V. Bryan
U. S. Circuit Judge, Alexandria, Virginia

Honorable Harrison L. Winter
U. S. Circuit Judge, Baltimore, Maryland

Honorable John D. Butzner
U. S. District Judge, Richmond, Virginia

Honorable R. D. McIlwaine, III
Assistant Attorney General

Honorable William C. Carter
Commonwealth Attorney for Cumberland County
Cumberland, Virginia

Honorable H. Benjamin Vincent
Commonwealth Attorney for Greensville County
Emporia, Virginia

Response to Plaintiffs' Request for Admissions Filed by Mark Grizzard, Forest Lankford and Benjamin Griffin

Now comes Mark Grizzard, Forest Lankford and Benjamin Griffin, by counsel, and respond to plaintiffs' request for admissions hereto filed in this cause as follows:

1. These defendants admit the accuracy of the matters set forth in Paragraphs One, Two and Three of said request.

2. These defendants have no knowledge of the matters set forth in the following Paragraphs of said request, Paragraphs Four through Twelve, Fourteen, Seventeen, Twenty, Twenty-Two through Forty-Two and neither admit or deny the same.

3. These defendants admit the accuracy of the matters set forth in Paragraphs Thirteen, Fifteen, Sixteen, Eighteen, Nineteen and Twenty-One of the said request.

Mark Grizzard
Forest Lankford
Benjamin Griffin
By /s/ H BENJ VINCENT
Counsel

Honorable Albert V. Bryan
U. S. Circuit Judge
Alexandria, Virginia

Honorable Harrison L. Winter
U. S. Circuit Judge
Baltimore, Maryland

Response to Plaintiffs' Request for Admissions Filed by Mark Grizzard, Forest Lankford and Benjamin Griffin

Honorable John D. Butzner
U. S. District Judge
Richmond, Virginia

Honorable R. D. McIlwaine, III
Assistant Attorney General
Richmond, Virginia

Honorable William C. Carter
Commonwealth Attorney for Cumberland County
Cumberland, Virginia

Honorable William R. Blandford
Attorney at Law
Powhatan, Virginia

Defendants' Exhibit #1

(Letter to All Registrars)

COMMONWEALTH OF VIRGINIA

[EMBLEM]

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 23219

August 12, 1965

TO ALL REGISTRARS:

On August 6, 1965, the "Voting Rights Act of 1965" enacted by the Congress of the United States became effective and is now in force in Virginia. Under the wording of this Act, use of the Virginia registration forms in the manner required by Virginia law prior to August 6th is now prohibited. So far as I am now advised, the information required on the registration forms heretofore sent you on April 19, 1965 can still be obtained at the time of registration.

These forms may be obtained by an applicant from the Registrar at the usual time and place for registration. The forms may be completed only at the place where obtained and shall be submitted by the applicant in person at that place.

The Registrar shall review the forms in the presence of the applicant to insure that all questions are answered clearly and completely. If all questions are not answered clearly and completely, or if the applicant is not able personally to complete the forms in whole or in part because

Defendants' Exhibit #1

of lack of literacy or otherwise, or has difficulty in doing so, the Registrar shall orally examine the applicant and record the pertinent information on the forms or otherwise assist the applicant in completing the forms. After the forms are completed, the Registrar shall require the applicant to take an oath or affirmation as to the truth of the answers and to sign his name or make his mark thereon.

If more information is obtained that makes desirable a change in the present registration forms, such information will be furnished you.

Sincerely yours,
STATE BOARD OF ELECTIONS
/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Defendants' Exhibit #2

(Memo to General Registrars)

COMMONWEALTH OF VIRGINIA

[EMBLEM]

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 23219

October 15, 1965

MEMO TO THE GENERAL REGISTRARS

Today this office is mailing a supply of bulletins to the secretaries of the electoral boards throughout the State to be distributed to each judge of election. You will find a copy of this bulletin enclosed as I know this is a question of vital concern to you also.

With best wishes, I am

Very truly yours,

STATE BOARD OF ELECTIONS
/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Enclosure

Defendants' Exhibit #3

(Letter to Secretaries of Electoral Boards)

COMMONWEALTH OF VIRGINIA

[EMBLEM]

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 23219

October 15, 1965

TO THE SECRETARIES OF THE ELECTORAL BOARDS:

I am sending you a supply of a bulletin "To ALL ELECTION JUDGES." When the official ballots are delivered to the judges of election as required by Section 24-230 of the Code, you will please deliver along with the package of ballots three (3) of these bulletins—one for each precinct judge.

At the time you deliver the official ballots and the bulletin, you will please direct the attention of the judge to whom delivery is made to Sections 24-231 and 24-232 of the Code and insist upon strict compliance and call special attention to the penalties for non-compliance as set forth in Section 24-233 of the Code.

Very truly yours,

STATE BOARD OF ELECTIONS
/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Defendants' Exhibit #4

(Bulletin to All Judges of Elections)

COMMONWEALTH OF VIRGINIA

[EMBLEM]

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 23219

October 15, 1965

BULLETIN FROM STATE BOARD OF ELECTIONS

TO ALL JUDGES OF ELECTION:

On August 6, 1965, the "Voting Rights Act of 1965" enacted by the Congress of the United States became effective and is now in force in Virginia. Under the provisions of this Act, any person qualified to vote in the General Election to be held November 2, 1965, who is unable to mark or cast his ballot, in whole or in part, because of a lack of literacy (in addition to any of the reasons set forth in Section 24-251 of the Virginia Code) shall, if he so requests, be aided in the preparation of his ballot by one of the judges of election selected by the voter. The judge of election shall assist the voter, upon his request, in the preparation of his ballot in accordance with the voter's instructions, and shall not in any manner divulge or indicate, by signs or otherwise, the name or names of the person or persons for whom any voter shall vote.

Defendants' Exhibit #4

These instructions also apply to precincts in which voting machines are used.

Very truly yours,
STATE BOARD OF ELECTIONS
/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

"Courtesy Makes Driving Safer"

Motion for Summary Judgment

Plaintiffs move that the court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in prayers B (1) and (3) of the Complaint, on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon (a) the complaint and answers thereto (b) the affidavits of the plaintiffs attached to the complaint and therewith served on each defendant, (c) plaintiffs' requests for admission as to which there was neither sworn denial nor written objections in accordance with Rule 36 (a), and (d) plaintiffs' exhibits 1, 2 and 3.

/s/ HAROLD M. MARSH
Of Counsel for Plaintiffs

HILL, TUCKER & MARSH
214 East Clay Street
Richmond, Virginia

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York, New York

Counsel for Plaintiffs

Memorandum of the Court

John D. Butzner, Jr., District Judge:

The plaintiffs, registered voters who are unable to spell accurately or to write legibly, attempted to cast their votes for a write-in candidate in the 1966 congressional election. Each pasted a sticker, upon which the write-in candidate's name was printed, on the official ballot under the names of listed candidates and appropriately marked the ballot immediately preceding the sticker. These ballots were not tabulated for the write-in candidate. Upon these undisputed facts, the plaintiffs seek a declaratory judgment that the Fourteenth Amendment's equal protection clause and the Voting Rights Act of 1965 (42 U.S.C. §§ 1973, et seq.) invalidates § 24-252, Code of Virginia 1950, insofar as this section denies to any voter, solely because of his inability to write, the privilege of casting a secret ballot for a candidate whose name is not printed on the official ballot. The plaintiffs pray that the defendants be enjoined from refusing to count any vote because the candidate's name was inserted on the official ballot by means other than the voter's handwriting. We conclude that the relief sought by the plaintiffs should be denied.

Pertinent provisions of the Virginia Constitution are:

> "§ 27: *Method of Voting.*—All elections by the people shall be by ballot; * * *
>
> "The ballot box shall be kept in public view during all elections, and shall not be opened, nor the ballots canvassed or counted, in secret.
>
> So far as consistent with the provisions of this Constitution, the absolute secrecy of the ballot shall be maintained."

"§ 28. *Ballots.*—The General Assembly shall provide for ballots without any distinguishing mark or symbol, for the use in all State, county, city and other elections by the people, and the form thereof shall be the same in all places where any such election is held. All ballots shall contain the names of the candidates and of the offices to be filled, in clear print and in due and orderly succession; but any voter may erase any name and insert another."

Section 24-252, Code of Virginia 1950, provides:

"*Insertion of names on ballots.*—At all elections except primary elections it shall be lawful for any voter to place on the official ballot the name of any person in his own handwriting thereon and to vote for such other person for any office for which he may desire to vote and mark the same by a check (√) or cross (× or +) or a line (—) immediately preceding the name inserted. Provided, however, that nothing contained in this section shall affect the operation of § 24-251 of the Code of Virginia. No ballot, with a name or names placed thereon in violation of this section, shall be counted for such person."

The propriety of stickers is a matter for legislative, not judicial determination. Arguments for and against their use abound. Stickers have been lauded for facilitating voting and denounced as conductive to fraud and confusion. Their use has been approved under statutes permitting write-ins. *Pace* v. *Hickey,* 236 Ark. 792, 370 S.W. 2d 66 (1963); *O'Brien* v. *Election Comm'rs.,* 257 Mass. 332, 153 N.E. 553 (1926); *Dewalt* v. *Bartley,* 146 Pa. 529, 24 Atl. 185 (1892); *State* v. *Anderson,* 191 Wisc. 538, 211 N.W. 938 (1927). Illinois forbade their use, *Fletcher* v. *Wall,* 172 Ill.

426, 50 N.E. 230 (1898), and the constitutionality of this ban has been upheld. *Blackman* v. *Stone,* 101 F.2d 500, 504 (7th Cir. 1939).

The plaintiffs' contention that § 24-252 violates the Fourteenth Amendment because it discriminates against illiterates is not supported by authority. To the contrary, exclusion of illiterate persons from voting, if no other discrimination is practiced, does not violate the Fourteenth Amendment.

In *Lassiter* v. *Northampton Election Bd.,* 360 U.S. 45, 51 (1959), the Court said:

> "We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record • • • are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. • • • It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. • • • North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

Lassiter warns that "• • • a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." 360 U.S. 53. No evidence has been presented that Virginia's prohibition of stickers has been administered in a discriminatory manner. It has not been used to disfranchise any class of citizens. We conclude that § 24-252 does not violate the Fourteenth Amendment by discriminating between literate and illiterate voters.

The equal protection clause of the Fourteenth Amendment and the Fifteenth Amendment are not the only standards by which state legislation governing the franchise must be measured. State laws affecting the right of suffrage must not contravene "• • • any restriction that Congress, acting pursuant to its constitutional powers, has imposed." *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). The plaintiffs urge that requiring the name of the write-in candidate to be inserted in the voter's own handwriting violates the Voting Rights Act of 1965 (42 U.S.C. § 1973, et seq.). The constitutionality of pertinent sections of the Act is not in dispute. Cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966).

Virginia is subject to the Act, 42 U.S.C. § 1973b(b). Until the state is removed from the Act's provisions, all tests or devices for determining eligibility to vote are suspended. 42 U.S.C. § 1973b(a).

The plaintiffs rely on these sections of the Act:

> 42 U.S.C. § 1973b(a):
>
> "• • • no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State • • •."

42 U.S.C. § 1973b(c):

"The phrase 'test or device' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

42 U.S.C. § 1973i(a):

"No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this subchapter or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote."

Section 24-251, Code of Virginia 1950, authorizes a judge voters of election, upon request, to assist a physically handicapped voter prepare his ballot, and allows a blind voter to be aided by a person of his choice. The assistants are enjoined to secrecy. For any corrupt violation of their duties, they may be punished by confinement in jail for not less than one nor more than twelve months. No provision was made for helping an illiterate person because under Virginia law all voters had to demonstrate ability to read and write.

After the enactment of the Voting Rights Act of 1965, Virginia directed its registrars to help illiterate persons register. The Board of Elections recognized that illiterates might need assistance with their ballots. For this reason, it instructed all judges of election:

"On August 6, 1965, the 'Voting Rights Act of 1965' enacted by the Congress of the United States became effective and is now in force in Virginia. Under the provisions of this Act, any person qualified to vote in the General Election to be held November 8, 1965, who is unable to mark or cast his ballot, in whole or in part, because of a lack of literacy (in addition to any of the reasons set forth in Section 24-251 of the Virginia Code), shall, if he so requests, be aided in the preparation of his ballot by one of the judges of election selected by the voter. The judge of election shall assist the voter, upon his request, in the preparation of his ballot in accordance with the voter's instructions, and shall not in any manner divulge or indicate, by signs or otherwise, the name or names of the person or persons for whom any voter shall vote.

These instructions also apply to precincts in which voting machines are used."

The Attorney General of Virginia asserted, and the plaintiffs do not controvert, that these instructions apply while the Voting Rights Act of 1965 is effective in the state.

The requirement that a write-in candidate's name be inserted in the voter's handwriting is not a test or device defined in 42 U.S.C. § 1973b(c). The requirement did not preclude the plaintiffs from registering or from voting. Under present Virginia statutes and regulations of the Board of Elections, an illiterate can cast a valid write-in ballot by enlisting the assistance of a judge of election. No evidence was offered that any judge of election denied any illiterate voter the confidential assistance to which he is entitled.

Judgment will be entered for the defendants.

May 2, 1967

Judgment

For reasons stated in the opinion of the court this day filed;

It is ADJUDGED AND ORDERED that the prayer of the plaintiffs' complaint is denied, the complaint is dismissed, and the action is stricken from the docket with costs taxed against the plaintiffs.

United States Circiut Judge
/s/ JOHN D. BUTZNER, JR.

United States District Judge
/s/ ALBERT V. BRYAN

United States Circiut Judge
/s/ HARRISON L. WINTER

Plaintiffs' Notice of Appeal

I. Notice is hereby given that the plaintiffs Richard Allen, Lena W. Dunn, Washington Moore, McKinley Dunn, Nora Tyler, James Gilbert Tyler, Fannie M. Brown, Patrick N. Brown and James Donikens hereby appeal to the Supreme Court of the United States from the final order entered in this action on May 2, 1967 whereby prayers B (1) and (3) of the plaintiffs' complaint for a declaratory judgment and injunctive relief were denied and said complaint was dismissed.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Docket entries
2. Complaint and affidavits filed therewith
3. Notification and request for designation of three-judge court
4. Designation of three-judge court
5. Pre-trial order
6. Answer of State Board of Elections
7. Answer of Robert E. Garnett and J. F. Lipscomb
8. Answer of Thomas Brown
9. Answer of Paul Bell
10. Answer of Mark Grizzard, Benjamin Griffin and Forest Lankford
11. Request for Admissions

12. Response to Plaintiffs' Request for Admissions, filed by State Board of Elections
13. Response to Plaintiffs' Request for Admissions, filed by Robert E. Garnett and J. F. Lipscomb
14. Response to Plaintiffs' Request for Admissions, filed by Thomas Brown and Paul Bell
15. Response to Plaintiffs' Request for Admissions, filed by Mark Grizzard, Forest Lankford and Benjamin Griffin
16. Plaintiffs' Exhibit No. 1 (Sticker or Paster)
17. Plaintiffs' Exhibit No. 2 (Statement of the Vote)
18. Plaintiffs' Exhibit No. 3 (Table showing Disparities)
19. Defendants' Exhibit #1 (Letter to all registrars)
20. Defendants' Exhibit #2 (Memo to general registrars)
21. Defendants' Exhibit #3 (Letter to Secretaries of Electoral Boards)
22. Defendants' Exhibit #4 (Bulletin to all judges of elections)
23. Motion for Summary Judgment
24. Plaintiffs' Pre-trial Brief
25. Brief in Behalf of Defendants
26. Opinion of the Court
27. Judgment
28. This Notice of Appeal

Plaintiffs' Notice of Appeal

III. The following questions are presented by this appeal:

1.

Does the Fourteenth Amendment inhibit Virginia from denying to electors who cannot write the privilege of voting secretly for a person not named on the ballot, while extending such privilege to electors who can write?

2.

Does the Voting Rights Act of 1965 inhibit Virginia from denying to electors who cannot write the privilege of voting secretly for a person not named on the ballot, while extending such privilege to electors who can write?

/s/ S. W. TUCKER
Of Counsel for the Plaintiffs
S. W. Tucker
Address: 214 East Clay Street
Richmond, Virginia 23219

S. W. TUCKER
HAROLD M. MARSH
HILL, TUCKER & MARSH
214 East Clay Street
Richmond, Virginia 23219

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York, New York 10019

Counsel for Plaintiffs

Motion to Enlarge Time for Filing Jurisdictional Statement

Plaintiffs move the Court to extend until September 28, 1967, the time within which plaintiffs may file their Jurisdictional Statement, on the grounds that such an extension will afford plaintiffs' attorneys adequate time to comprehensively present and develop the issues raised herein.

No previous extensions of time have been obtained from the adverse party or granted by this Court.

/s/ S. W. Tucker
Of Counsel For Plaintiffs

S. W. Tucker
Harold M. Marsh
Hill, Tucker & Marsh
214 East Clay Street
Richmond, Virginia 23219

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

Counsel for Plaintiffs

Order Granting Motion to Enlarge Time to File Jurisdictional Statement

Plaintiffs having moved the Court to extend until September 28, 1967, the time within which plaintiffs may file their Jurisdictional Statement, and it appearing to the Court that the motion is made for good cause, it is

ORDERED, that plaintiffs' time to file their Jurisdictional Statement in the above entitled cause be extended to and including the 28th day of September, 1967.

Let the Clerk send copies of this order to counsel of record.

.....

United States Circuit Judge

August 23, 1967

Order Extending Time for Docketing Appeal

It being represented unto the court that further time will be required by the clerk within which to prepare and file the appeal record in this action in the United States Supreme Court,

IT IS ORDERED that the time for docketing the appeal in this case in the aforesaid court be and the same hereby is, extended to and including the eighth day of September, 1967.

Let copies hereof be forwarded to counsel of record.

/s/ JOHN D. BUTZNER, JR.

United States District Judge Designate

Entry Nunc Pro tunc August 8, 1967,
August 24, 1967

Order of United States Supreme Court Postponing Jurisdiction

(Filed June 10, 1968)

No. 661, *Allen* v. *State Board of Elections*

Further consideration of the question of jurisdiction in this case is postponed to the hearing of the case on the merits. The case is placed on the summary calendar.